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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20054

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MAY 10 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 ) RM-  
Amendment of Section 73.622(b) ) MM Docket No.  
DTV Table of Allotments )  
(Palm Springs, CA) )

To: Pam Blumenthal  
Video Services Division

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**MOTION TO HOLD IN ABEYANCE**

Gulf-California Broadcast Company ("GCBC"), permittee of  
**KESQ-DT, Palm Springs, CA**, respectfully moves that the FCC "hold  
in abeyance" its October 28, 1999 Petition for Rule Making.

GCBC's Petition seeks to amend the FCC's DTV Table of Allot-  
ments, Section 73.622(b) of the FCC's Rules, by substituting DTV  
channel 44 for DTV channel 52 at Palm Springs, CA, and modifying  
GCBC's DTV allotment accordingly. The Petition was necessitated  
by the FCC's final allotment to KESQ-TV of a DTV channel that  
severely restricts its ERP and, effectively, emasculates KESQ-  
TV's service area. <sup>1/</sup> See Petition at 1-2. <sup>2/</sup>

At the time that GCBC's Petition was filed last year, the  
Commission had deleted the call sign and denied a  
"13th" extension request for unbuilt station KRPA-TV, channel 44,

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<sup>1/</sup> Moreover, GCBC further argued that its consulting engineers  
had predicted that interference from analog channel 52 (Corona, CA)  
to GCBC's DTV channel 52 allotment at Palm Springs, CA would further  
reduce KESQ-TV's service area to only a fraction of the service area  
currently authorized for its analog channel 42 facility. See  
Petition at 2.

<sup>2/</sup> The FCC's allotment of channel 52 for KESQ-DT authorized  
only 67.3 KW of ERP, while KESQ-TV is presently authorized 1820 KW  
of power on analog channel 42 -- **a 68 percent reduction in  
population served (from 2.5 million to 859,000).**

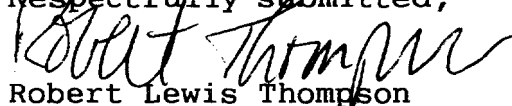
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Rancho Palos Verdes, CA. The FCC's "final" death blow last year to KRPA-TV's long-unbuilt CP was in fact the basis upon which GCBC's Petition was based.

Within the past month, the Video Services Division has concluded that it is required procedurally to reinstate KRPA's CP but only through December 21, 2000. Its April 18, 2000 decision pointedly warned the permittee that, "in light of the history of this proceeding, we will not be generally inclined to grant additional extensions of time..." Indeed, in light of the Rancho Palos Verdes permittee's failure to garner necessary zoning and other local approvals over the past two decades, there is at least a reasonable probability that the CP will expire on or about December 21, 2000. There is, thus, a reasonable probability that the FCC will be able to timely process GCBC's Petition shortly after that date. <sup>3/</sup>

Accordingly, in view of the foregoing, GCBC respectfully requests that the FCC grant this Motion to Hold in Abeyance until such time as the FCC takes "final" action with respect to the temporarily reinstated CP for KRPA-TV, channel 44, Rancho Palos Verdes, CA.

Respectfully submitted,



Robert Lewis Thompson  
**THIEMANN AITKEN et al, LLC**  
908 King Street, Suite 300  
Alexandria, VA 22314

May 10, 2000

Counsel for GCBC

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<sup>3/</sup> GCBC is not required to construct its Palm Springs DTV facility until May, 2002.

holding

**FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

APR 18 2000

In reply refer to:  
8310-AEA

Rancho Palos Verdes Broadcasters, Inc.  
1299 Pennsylvania Avenue, NW  
Ninth Floor  
Washington, D.C. 20036

Re: Applications for Modification and  
Extension of Time to Construct  
KRPA (TV), Channel 44, Rancho  
Palos Verdes, California  
File Nos. BMPCT-981228LA &  
BMPCT-980511KE

Dear Permittee:

This addresses the Petition for Reconsideration filed on behalf of Rancho Palos Verdes Broadcasters, Inc. ("RPVB"), with respect to station KRPA(TV), Channel 44, Rancho Palos Verdes, California. RPVB seeks reconsideration of the action of the Chief, Television Branch of the Video Services Division, Mass Media Bureau, denying the above-captioned application for an extension of time to construct the station, canceling the construction permit, deleting the call sign, and dismissing as moot the above-captioned application to modify the construction permit. Channel 51 of San Diego, Inc. ("Channel 51"), which filed an Informal Objection to RPVB's extension application, filed an opposition to the Petition for Reconsideration.

In brief and among other things, RPVB claims that it was prevented from completing construction at its authorized site due to circumstances beyond its control. Specifically, it claims that despite its efforts, the inability to obtain the required use permits, zoning and other approvals necessary to construct its facility justify extension of the construction permit. It also maintains that it attempted to alleviate this problem by seeking a modification of the construction permit to specify a new, less problematic transmitter site which is more likely to garner local approvals, a process it has already commenced. During the last construction term, it reports, it followed up on its applications and provided additional information as requested by local authorities. Channel 51 contends that while RPVB continues to pursue the approvals for a new transmitter site, its efforts during the relevant past extension term were minimal at best, and certainly not sufficiently "diligent" to warrant a further extension of the construction permit.

The arguments of the parties notwithstanding, we conclude that the construction permit must be reinstated. In 1998 Biennial Review - Streamlining of Mass Media Applications, Rules and Processes, 13 FCC Rcd 23056 (1998) ("Streamlining Order I"), modified, 14 FCC Rcd 17525, 17536 (1999) ("Streamlining Order II"), the Commission streamlined its applications process to, among other things, afford permittees three unencumbered years to complete station

construction and subject them to revised extension procedures. Specifically, the Commission stated, in pertinent part:

We will provide relief to permittees holding valid initial authorizations or extensions on February 16, 1999, the effective date of the *Streamlining Order [I]*, including permittees whose authorizations have already expired but for which forfeiture is not final. Pursuant to this action we take today, these permittees' authorizations will now automatically forfeit . . . one year from the effective date of *Order*. . . .

*Streamlining Order II*, at 17536. Permittees affected by this provision now have until December 21, 2000 to construct.<sup>1</sup>

The KRPA(TV) construction permit falls within that category of authorizations to be reinstated. A staff action taken pursuant to delegated authority does not become effective until public notice issues, and, if a timely petition for reconsideration is filed, that action does not become final until 40 days after the release of the final order disposing of the petition. See Section 1.102 of the Commission's Rules, 47 C.F.R. § 1.102. In the case at hand, the Public Notice (Report No. 44434) denying the KRPA(TV) extension application and cancelling the construction permit was released on February 23, 1999, the effective date of that action. Therefore, the KRPA(TV) construction permit remained valid on February 16, 1999. Moreover, because RPVB's reconsideration petition was timely when it was filed on March 22, 1999, the cancellation of that authorization had not become a final action. Accordingly, the KRPA(TV) construction permit is subject to the relief provisions set forth in *Streamlining Order II*, and will be extended until December 21, 2000. We strongly encourage the completion of construction by that date. Moreover, in light of the history of this proceeding, we will not be generally inclined to grant additional extensions of time to construct that do not meet the strict standards established in *Streamlining Order II*.

By our action today, we will also reinstate the application to modify facilities that proposes construction of a new tower for KRPA(TV) at a nearby location where, the permittee represents, it has been given assurances that zoning and local approvals will be more readily obtained. The permittee's efforts in this regard are consistent with the Commission's desire that the construction periods established in both *Streamlining Order I* and *Streamlining Order II* be afforded to existing permittees to allow, among other things, the resolution of zoning issues or the selection of a new site free of zoning difficulties.<sup>2</sup> Such action is not only consistent with the Commission's guidelines, but also serves public interest served by affording the permittee an opportunity to timely resolve its long-standing zoning obstacles and bring this new television service to the viewers of Rancho Palos Verde or risk automatic forfeiture of the authorization.

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<sup>1</sup> See 64 FR 56974 (1999).

<sup>2</sup> 13 FCC Rcd at 23091; 14 FCC Rcd at 17537.

Accordingly, and in view of the foregoing, the Petition for Reconsideration filed by Rancho Palos Verdes Broadcasters, Inc. IS GRANTED; the construction permit and call sign for station KRPA(TV) ARE REINSTATED; the application for extension of time to construct station KRPA(TV) (File No. BMPCT-981228LA) IS GRANTED as set forth herein; and the application for modification of the construction permit (File No. BMPCT-980111KE) IS REINSTATED. Furthermore, the opposition to the Petition for Reconsideration filed by Channel 51 of San Diego, Inc. IS DENIED.

Sincerely,

A handwritten signature in black ink, appearing to read "Clay C. Pendarvis". The signature is fluid and cursive, with the first name "Clay" being more legible than the last name "Pendarvis".

Clay C. Pendarvis  
Chief, Television Branch  
Video Service Division  
Mass Media Bureau

cc: Barry A. Friedman, Esquire  
Kevin M. Goldberg, Esquire  
Jerry V. Haines, Esquire